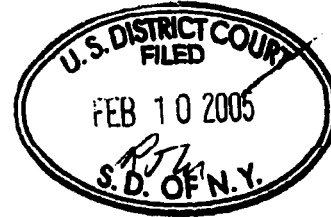


EXHIBIT A

Case 1:21-mc-00100-AKH Document 85 Filed 02/10/2005 Page 1 of 7

203 # 85



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

Master Docket No.: 21 MC 100 (AKH)

CASE MANAGEMENT ORDER No. 3

This Order outlines the timing of and manner in which discovery limited to the subject matters of certain potentially dispositive motions, identified herein, that it is anticipated will be made by one or more Defendants in these actions is to be conducted in the above-captioned World Trade Center Disaster Site Litigation (the "Litigation"). This case management order ("CMO No. 3") is the product of recommendations by Plaintiffs' Liaison and Steering Committee Counsel, Defendants' Liaison and Steering Committee Counsel, and counsel for other parties, but departs from those recommendations and reflects my own requirements in certain requests.

I. Definitions

As used herein, the World Trade Center Site shall be defined as the 16-acre site including the sites of the buildings known as 1 World Trade Center, 2 World Trade Center, 3 World Trade Center (a/k/a the Marriot World Trade Center Hotel), 4 World Trade Center, 5 World Trade Center and 7 World Trade Center, as well as the surrounding plaza and underground shopping, parking and public transit facilities. The World Trade Center Site shall also be defined to include the World Financial Center and Winter Garden, the Verizon Building at West and Vesey Streets, the Deutsche Bank Building at Liberty and Greenwich Streets, 90 West Street, St Nicholas Church, and 125 Cedar Street, as well as the Fresh Kills Landfill site, the debris-removal barges, piers and transfer stations. This definition is provided for the sole purpose of

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construing the provisions of CMO No. 3 and may not be utilized or cited by the parties for any other purpose.

II. Defendants' Motions

Defendants' Liaison and Steering Committee Counsel previously have identified for the Court and for Plaintiffs' counsel certain motions that they anticipate will be made by one or more Defendants and which may be dispositive of some or all of the individual actions in the Litigation. The Court has expressed an interest in having focused and specific discovery ("limited" discovery) undertaken regarding the subject matters of these motions in order to develop an appropriate record for these motions. This CMO No. 3 sets forth the plan for this limited discovery and the Defendants' dispositive motions to follow.

Defendants contemplate the following motions for summary judgment or judgment on the pleadings dismissing some or all of Plaintiffs' claims with prejudice based on various provisions of statute or common law providing immunity to defendants against plaintiffs' claims. Among such provisions are:

- A. The New York State Defense Emergency Act, N.Y. Unconsol. Law §§ 9101-9200;
- B. The New York State and Local Natural and Man-Made Disaster Preparedness Law, N.Y. Exec. Law §§ 20-29-g;
- C. Principles of common law immunity, to be identified, in reasonable detail within ten (10) days of the entry of this Case Management Order;
- D. Principles of federal immunity to be identified in reasonable detail within ten (10) days of the entry of this Case Management Order; and

E. Those Defendants whose alleged liability would derive from their status as owner or lessee of the property at issue (or some part thereof), but who were not in control or possession of the relevant property at the time of Plaintiffs' claimed injuries may also file motions for summary judgment or for judgment on the pleadings, dismissing all or part of the claims against them. Such defendants, within ten (10) days of the entry of this Case Management Order shall identify with specificity:

- 1) The property involved; and
- 2) The status of defendants with regard to such property; and

F. Those Defendants whose alleged liability would derive from their status as owner or lessee of the property at issue (or some part thereof), but who were not in control or possession of the relevant property at the time of Plaintiffs' claimed injuries shall produce the specific documents reflecting the defendant's status and that of all others relating to the property.

III. Order of Discovery

A. *Defendants' Preliminary Disclosure of Reasonably Ascertainable Information Relevant To Their Motions And Detailed Chronological Declarations*

1. *Briefs And Opinions Relating To Previously Filed Dispositive Motions In Other World Trade Center Litigations*

Within five (5) days of the entry of this CMO No. 3, Defendants' Liaison and Steering Committee Counsel shall provide Plaintiffs' Liaison and Steering Committee Counsel and the Court with all judicial opinions, previously filed briefs and supporting documentation in other World Trade Center Litigations not pending before this Court that are in Defendants' possession and relate to the subject matters of the motions identified herein.

2. *Preliminary Disclosure Of Organizations Involved In Rescue, Recovery, Debris Removal And/Or Construction At The World Trade Center Site And Documents Of Which Defendants Are Currently Aware And Intend To Rely Upon In Support Of The Motions Described Herein*

Within ten (10) days of the entry of this CMO No. 3, Defendants' Liaison and Steering Committee Counsel shall provide to Plaintiffs' Liaison and Steering Committee Counsel, a list identifying all city agencies and non-city entities that worked at or were in any way involved in the rescue, recovery, cleanup, debris removal and/or construction at the World Trade Center Site. Within thirty (30) days of the entry of this CMO No. 3, Defendants' Liaison and Steering Committee Counsel shall also provide to Plaintiffs' Liaison and Steering Committee Counsel copies of documents, if any, of which Defendants are then aware, of which Defendants intend to rely in support of their motions.

3. Defendants' Detailed Chronological Declarations

Within thirty (30) days of the entry of this Case Management Order, each Defendant (except, as to the Contractor Defendants, only the four prime Contractors—Bovis, Turner, Tully, and Amec) shall provide to Plaintiffs' Liaison and Steering Committee Counsel a detailed chronological declaration that shall set forth the key arguments that the Defendant anticipates may be made to support the anticipated motions identified herein. In addition to key arguments then anticipated, each Defendant's detailed chronological declaration shall also set forth the following information.

- (a) The scope of work that the Defendant performed at the World Trade Center Site;
- (b) Where the Defendant performed work at the World Trade Center Site;
- (c) The dates when the Defendant began work, performed work, and concluded work at the World Trade Center Site;
- (d) Whether the Defendant entered into any contract for the work done at the World Trade Center Site, as well as copies of such contracts, if any exist;
- (e) The Defendants shall also disclose the internal "chain of command" structure for each entity during the relevant time period;
- (f) Defendants' declarations shall include: all declarations and orders issued by City, State and Federal agencies and departments governing: A) Occupational safety and health of workers at the site; and B) the provision of respiratory equipment to workers at the site and C) the access of workers, including firefighters, to the site;

~~Case 1:21-mc-00100-AKH Document 85 Filed 02/10/2005 Page 6 of 7~~

(g) The area of the World Trade Center Site the Defendant was assigned to, if applicable; and maps of the World Trade Center Site depicting its division into quadrants, to the extent the Defendant possesses such maps and if any such maps in fact exist.

(h) Information concerning Defendants and/or subcontractors involved in producing or providing respirators, air quality, or safety at the World Trade Center site.

Defendants shall have the duty to supplement all discovery obligations within five days after learning of information which, had it been known, should have been disclosed pursuant to this CMO.

B. Identification of and Discovery Requests to City Agencies and/or Departments

1. Plaintiffs' Identification of City Agencies and/or Departments From Which They Intend to Seek Discovery and Related Discovery Requests

Within twenty (20) days of the entry of this CMO No. 3, Plaintiffs' Liaison and Steering Committee Counsel shall provide to Defendants' Liaison and Steering Committee Counsel a list identifying the agencies and/or departments of the City of New York from which Plaintiffs seek documents and information regarding the subject matters of the motions identified herein.

Within fifty (50) days of the entry of this CMO NO. 3, Plaintiffs' Liaison and Steering Committee Counsel shall provide to Defendants' Liaison and Steering Committee Counsel a detailed chronological declaration that shall set forth the key arguments that Plaintiffs then anticipate may be asserted in opposition to Defendants' anticipated motions identified herein.

~~Case 1:21-mc-00100-AKH Document 85 Filed 02/10/2005 Page 7 of 7~~

The Court will hold a Case Management Conference on Monday, April 18, 2005, at 4:00 P.M. to regulate further discovery, the filing of motions and oppositions and replies, and to entertain further case management recommendations.

SO ORDERED


Alvin K. Hellerstein, U.S.D.J.


Dated: New York, New York
February 7, 2005

~~CONSENTED TO:~~

~~Plaintiffs' Liaison Counsel~~

~~Plaintiffs' Liaison Counsel~~

~~By: Andrew Carboy, Esq.~~

~~By: Paul J. Napoli~~ 

~~Dated: New York, New York
February __, 2005~~

~~CONSENTED TO:~~

~~Defendants' Liaison Counsel~~

~~Defendants' Liaison Counsel~~

~~By: James E. Tyrrell, Esq.~~

~~By: Richard A. Williamson~~

~~Dated: New York, New York
February __, 2005~~

EXHIBIT B

21 MC 102
In Re: World Trade Center Lower Manhattan Disaster Site Litigation
Summary of Information from Short Form "Check Off" Complaints"

A	B	C	D	E	F	G	H
No.	Plaintiff	Docket No.	Alleges Work for Tully or Named Sub-Contractors	Work for Non-"Tully" Companies	Job Title	Work Sites Other than "WTC Site" as Defined in CMO 3	Alleges Work at DB Building other than from 1/8/02 to 7/1/02
1	Acosta, Byron	07cv1552	No	LVI Environmental Services, Inc.	Handler		Yes
2	Adriano, Luis	07cv4445	No	ETS Contracting and PAL	Asbestos handler	1 Liberty Plaza; Post Office	Yes
3	Agudelo, Gladys	07cv4446	No	Comprehensive Environmental	Asbestos cleaner	1 Federal Plaza; 100 Church Street; 70 Pine Street; 75 Park Place; High School of Economics and Finance	No
4	Ali, Enrique	07cv1554	No	PAL Environmental Safety	Supervisor	1 Liberty Plaza	Yes
5	Allivar, Raul	05cv9821	No	PAL Environmental Safety	Handler	150 Broadway; 1 Liberty Plaza; Post Office (90 Church Street)	Yes
6	Alvarez, Maria	05cv10135	No	Kiss Construction and PAL	Handler	90 Trinity Place; High School of Economics & Finance; Post Office; Stuyvesant High School	Yes
7	Alvarracin, Jose	07cv1556	No	Pinnacle Environment	Asbestos handler	Post Office	Yes
8	Ascencio, Ivan	07cv1460	No	ETS Contracting	Laborer-asbestos	High School of Economics & Finance	Yes
9	Atencia, Marcelo	07cv1562	No	LVI Environmental Services, Inc.	Handler	Stuyvesant High School	Yes
10	Bailon, Peter	07cv5336	No	Pinnacle Environmental Corp.	Supervisor	Post Office	Yes
11	Barahona, Jose	07cv5550	No	Pinnacle Environmental Corp. and Trade Winds Environmental Restoration	Handler	100 Church Street	Yes
12	Betancourt, Hector	07cv4453	No	ETS Contracting, Inc. and PAL Environmental Safety	Handler	1 Liberty Plaza	Yes
13	Burgos, Leopoldo	07cv1473	No	PAL Environmental Safety	Handler		Yes
14	Caguana, Manuel	06cv11968	Yes: EROC	None	Laborer		Yes

21 MC 102
In Re: World Trade Center Lower Manhattan Disaster Site Litigation
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15	Calero, Ivan	07cv1575	No	PAL Environmental Safety	Shop steward		Yes
16	Calle, Wilson	07cv1578	No	Pinnacle Environment	Asbestos handler	Post Office	Yes
17	Campoverde, Rey R.	07cv5280	No	PAL Environmental Safety	Handler	Post Office	Yes
18	Campoazano, Esther	07cv4459	No	Pinnacle Environment	Asbestos handler		Yes
19	Cardenas, Edison	07cv1580	No	PAL Environmental Safety	Handler	Millenium Hilton Hotel	Yes
20	Castillo, Silvia	05cv1718	No	Branch	Handler		Yes
21	Chuva, Nancy	07cv1589	No	Trio Asbestos	Asbestos handler	Post Office	Yes
22	Cintrón, Yolanda	06cv5631	No	CES	Asbestos handler	160 Water Street; Stuyvesant High School	Yes
23	Cortez, Jorge E.	07cv5394	No	Galt John Corp.	Handler		Yes
24	Cortijo, Lidia	07cv317	No	LVI Environmental Services, Inc., PAL Environmental Safety and Pinnacle Environmental Corp.	None	101 Barclay Street; 4 Albany Street; Hudson View East	Yes
25	Criollo, Nancy	07cv4462	No	PAL Environmental Safety	Cleaner	1 Liberty Plaza	Yes
26	Dota, Clara	07cv1602	No	Asbestos Lead and Hazardous Materials Laborers	Asbestos handler	Post Office; Equitable Building	Yes
27	Drake, Jesse	07cv5353	No	Nastasi Eurotech	Carpenter		Yes
28	Drozdz, Stanislaw	06cv14620	No	Pinnacle, Trade Winds, Trio Asbestos	Asbestos handler	101 Barclay Street; 111 Wall Street; 140 Broadway; 70 Pine Street; Gillespi Building; Hudson View East; Parc Place; Stuyvesant High School	Yes

21 MC 102
In Re: World Trade Center Lower Manhattan Disaster Site Litigation
Summary of Information from Short Form "Check Off" Complaints"

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No. Plaintiff		Docket No.	Alleges Work for Tully or Named Sub-Contractors	Work for Non-"Tully" Companies	Job Title	Work Sites Other than "WTC Site" as Defined in CMO 3	Alleges Work at DB Building other than from 1/8/02 to 7/1/02
29	Duarte, Inerva	07cv1603	No	Safeway Construction, Inc. and Safeway Environmental Corp.	None		Yes
30	Dutan, Elvia	07cv1606	No	Pinnacle Environment	Office cleaner/handler	Post Office	Yes
31	Encalada, Jorge	07cv1607	No	PAL Environmental Safety and Pinnacle Environmental Safety	Handler		Yes
32	Franco, Luis	07cv4466	No	PAL Environmental Safety	Handler		Not Provided
33	Frelas, Janina	07cv1612	No	ETS Contracting, Inc. and Safeway Environmental Corp.	Asbestos handler and handler	233 Broadway	Yes
34	Gallardo, Norberto	07cv5290	No	Pinnacle Environmental Corp.	Handler		No
35	Garcia, Viviana	07cv1617	No	Comprehensive Environmental	Asbestos handler	Jacob K. Javits Federal Building	Yes
36	Gaspar, Peter	05cv10739	No	ETS Contracting, PAL, Pinnacle	Supervisor and asbestos	Post Office	Yes
37	Gawin, Leonard	07cv1619	No	PAL Environmental Safety, Safeway Environmental Corp., and Trade Winds Environmental Restoration	Asbestos handler	101 Barclay Street; 170 Broadway; 76 Varick Street; 95 Maiden Lane	Yes
38	Giamo, Samuel T.	06cv11676	No	FDNY	Firefighter		Yes
39	Giraldo, Hitien E.	07cv5554	No	PAL Environmental Safety	Handler		Yes
40	Gualpa, Rosa	07cv4472	No	Pinnacle Environmental Corp.	Asbestos cleaning	170 Broadway	Yes

21 MC 102
In Re: World Trade Center Lower Manhattan Disaster Site Litigation

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41	Guzman, Armando	07cv5556	No	Branch	Asbestos worker		Yes
42	Hernando, Nidia	07cv4473	No	Pinnacle Environment	Handler asbestos		Yes
43	Hurtado, Julio	07cv5295	No	Kiss Construction, Inc., LBI-ABAS, Locat 78, PAL Environmental Safety, Pinnacle Environmental Corp.	Not Provided	63 Wall Street; 90 Chambers Street; P.S. 234 Independence School; West Street Building	Yes
44	Idrovo, Manuel	07cv1628	No	Local 78	Cleaner	Post Office	Yes
45	Idrovo, Edgar	07cv1627	No	Pinnacle Environment	Asbestos cleaner		Yes
46	Inga, Jorge	07cv1629	No	LVI Environmental Services, Inc.	Handler	Post Office; West Street Building	Yes
47	Jablonski, Jozef	07cv1630	No	PAL Environmental Safety and Trade Winds Environmental Restoration	Asbestos handler	Post Office	Yes
48	Jaramillo, Jonas	06cv14746	No	Branch, PAL Environmental Safety, Pinnacle Environmental Corp., Trade Winds Environmental Rest.	Asbestos handler	100 Church Street	Yes
49	Karus, Marian	07cv1635	No	LVI Environmental Services, Inc., PAL Environmental Safety, and Pinnacle Environmental Corp.	Asbestos handler and handler	P.S. 89	Yes
50	Kosowski, Edward	07cv5299	No	PAL Environmental Safety, and Trade Winds Environmental Rest.	Asbestos handler	100 Church Street; 101 Barclay Street; 160 Water Street; 1 Liberty Plaza; Post Office; P.S. 234 Independence School	Yes
51	Lascano, Ana	05cv9333	No	PAL Environmental	Cleaner	150 Broadway; 1 Liberty Plaza; Post Office	Yes

21 MC 102
In Re: World Trade Center Lower Manhattan Disaster Site Litigation

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52	Lasica, Andrzej	07cv4480	No	PAL Environmental Safety, Pinnacle Environmental Corp.	Asbestos handler	High School of Economics & Finance; Hudson View East; Sytuvesant High School	Yes
53	Lenis, Carlos	06cv10045	No	CES	Supervisor		Yes
54	Leon, Ines	07cv4481	No	PAR Environmental Corp., and Pinnacle Environmental Corp.	Not Provided	90 Trinity Place; High School of Economics & Finance; Post Office; P.S. 234 Independence School	No
55	Leon, Cesar	07cv63	No	Safeway Environmental Corp.	Handler		Yes
56	Loja, Wilmo	07cv4482	No	Pinnacle Environment	Handler		Yes
57	Lucero, Fernando	07cv5366	No	Pinnacle Environmental Corp.	Handler	55 Water Street; Post Office	Yes
58	Medina, Rosa	07cv4491	No	TBP	To be supplied	Post Office	Yes
59	Melendez, Maria	07cv5397	No	PAL Environmental Safety	Handler		Yes
60	Mendez, Juan	07cv1664	No	Local 78	Asbestos handler	One Liberty Plaza	Yes
61	Merchan, Carlos	07cv1665	No	Pinnacle Environment Corp.	Asbestos handler		Yes
62	Mora, Eugenio	06cv13168	No	PAL Environmental Safety	Cleaner	100 Church Street; Post Office; Stuyvesant High School	Yes
63	Morales, Tatiana	07cv5370	No	Pinnacle Environment Corp.	Asbestos handler	Post Office	Yes
64	Moreno, Sandra	07cv1670	No	LVI Environmental Services, Inc. and Trio Asbestos	Not Provided		Yes
65	Naranjo, Luis	05cv10738	No	Local 78, LVI Environmental Services, Inc., PAL Environmental Safety, Pinnacle Environmental	Cleaner and cleaner/asbestos handler	Hudson View East; 1 Liberty Plaza; Post Office; Stuyvesant High School	Yes

21 MC 102
In Re: World Trade Center Lower Manhattan Disaster Site Litigation

Summary of Information from Short Form "Check Off" Complaints"

A	B	C	D	E	F	G	H
No.	Plaintiff	Docket No.	Alleges Work for Tully or Named Sub-Contractors	Work for Non-"Tully" Companies	Job Title	Work Sites Other than "WTC Site" as Defined in CMO 3	Alleges Work at DB Building other than from 1/8/02 to 7/1/02
66	Naranjo, Walter	07cv4496	No	Pinnacle Environment	Cleaner	25 Broadway; 90 Trinity Place; High School of Economics and Finance; Hudson View East; P.S. 234 Independence School; Stuyvesant High School	Yes
67	Negrete, Oscar	07cv5371	No	PAL Environmental Safety	Handler	233 Broadway	Yes
68	O'Connell, Sean	07cv5374	No	Volunteer	Volunteer		To be provided
69	Palaguachi, Rosa	07cv1680	No	Branch	Asbestos cleaner		Yes
70	Reynolds, David	07cv3446	No	Nastasi Eurotech	Carpenter	10 Liberty Street; American Stock Exchange; West Street Building	Yes
71	Rhoden, Marcel	07cv5311	No	Site Safety, LLC	Safety manager		Yes
72	Riera, Maximo	07cv1519	No	Comprehensive Environmental	Handler		Yes
73	Rodas, Patricio	07cv1694	No	Pinnacle Environmental Corp.	Handler	Post Office	Yes
74	Rojas, Jaime	07cv4511	No	Pinnacle Environmental Corp.	Asbestos handler	100 Church Street; Millenium Hilton Hotel; Post Office	Yes
75	Romanluk, Mieczyslaw	07cv5316	No	LVI Environmental Services, Inc., PAL Environmental Safety, Pinnacle Environmental Corp., Safeway	Asbestos handler	1 Federal Plaza; 1 Wall Street; 100 Church Street; High School of Economics and Finance; Hudson View East	Yes
76	Salazar, Victor	07cv4512	No	Pinnacle Environmental Corp.	Handler	Hudson View East	Yes
77	Sanchez, Rosa	06cv12488	No	TBP	TBP		Yes
78	Sanchez, Edilberto	07cv5384	No	PAL Environmental Safety	Asbestos handler		Yes

21 MC 102
In Re: World Trade Center Lower Manhattan Disaster Site Litigation

Summary of Information from Short Form "Check Off" Complaints"

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79	Santamaria, Emanuel	07cv1528	No	PAL Environmental Safety	Handler		Yes
80	Sarmiento, Galo	07cv1529	No	PAL Environmental Safety	Handler	20 Broad Street; 55 Water Street; West Street Building	Yes
81	Sarmiento, Edwin	07cv4515	No	Kiss Construction, Inc.	Asbestos handler	160 Water Street 24 Broadway; 63 Wall Street; 90 Trinity Place; High School of Economics and Finance (100 Trinity Place); Hudson View East; 1 Liberty Plaza; Post Office; Stuyvesant High School; P.S. 234 Independence School	Yes
82	Serrano, Theresa	05cv8937	No	PAL Environmental Safety	Handler		Yes
83	Siguencia, Raul	07cv1533	No	Pinnacle Enviromenal Corp.	Handler		Yes
84	Suarez, Felipe	07cv1707	No	Pinnacle Enviromenal Corp.	Asbestos handler		Yes
85	Sumba, Samuel	07cv1710	No	Pinnacle Enviromenal Corp.	Handler	63 Wall Street; Hudson View East; Stuyvesant High School; The Equitable Building	Yes
86	Tamayo, Pedro	07cv1538	No	Pinnacle Enviromenal Corp.	Cleaner	101 Barclay Street	Yes
87	Teham, Nicholas	07cv5564	No	Regional Scaffolding	Carpenter		Yes
88	Tenezaca, Julia	07cv1714	No	Pinnacle Enviromenal Corp.	Handler		Yes
89	Teran, Cesareo	07cv5389	No	Comprehensive Environmental	Handler		Yes
90	Thorpe, Jeanne	07cv1715	No	PAL Environmental Safety	Asbestos handler	Trinity Church	Yes

21 MC 102
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91	Valencia, Carlos A.	07cv5324	No	Maxons Restoration, Inc.	Cleaner	100 Church Street; 100 Gateway Plaza; 101 Barclay Street; 200 Gateway Plaza; 400 Gateway Plaza	Yes
92	Vasquez, Rommel	07cv1543	No	PAL Environmental Safety	Handler	Stuyvesant High School	Yes
93	Vazquez, Kattia	07cv1722	No	PAL Environmental Safety	Asbestos handler	Post Office	Yes
94	Vega, Severo	07cv4521	No	PAL Environmental Safety	Handler	1 Liberty Plaza	Yes
95	Villarroel, Segundo	07cv1546	No	PAL Environmental Safety	Handler	Stuyvesant High School	Yes
96	Villarruel, Kleber	06cv13703	No	PAL Environmental Safety	Foreman	1 Liberty Plaza	Yes
97	Walsh, Kevin	06cv12608	No	Nastasi Eurotech	Carpenter		Yes
98	Waniurski, Robert	07cv4524	No	LVI Environmental Services, Inc., PAL Environmental Safety, and Pinnacle Environmental Corp.	Asbestos handler	30 Rockefeller Plaza	Yes
99	Watson, Ancil	07cv5391	Yes: Tulley's [sic] Construction Company	None	Laborer		Yes
100	Wragg, Clarence	06cv8125	No	Trade Winds Environmental Restoration	Asbestos worker		Yes

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE WORLD TRADE CENTER DISASTER :
SITE LITIGATION :
-----X

CASE MANAGEMENT ORDER

21 MC 100 (AKH)

05 Civ. 3090 (AKH)

04 Civ. 9003 (KMK)

04 Civ. 5338 (GBD)

04 Civ. 7217 (GBD)

05 Civ. 0631 (E.D.N.Y.)

04 Civ. 9507 (HB)

05 Civ. 1927 (AKH)

05 Civ. 1091 (AKH)

05 Civ. 1092 (AKH)

05 Civ. 1093 (AKH)

ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE:

WHEREAS, on Tuesday, May 9, 2005 at 4:00 P.M., and on July 13, 2005 at 4:00 P.M., I held status conferences in the above matters, and counsel for both plaintiff and defendants have submitted reports on these cases pursuant to my request at the July 13, 2005 conference, IT IS NOW, THEREFORE ORDERED THAT:

MASTER DOCKET

1. Cases brought by plaintiffs arising out of or relating to the September 11, 2001 attack on the World Trade Center were consolidated before this Court for pre-trial purposes pursuant to this Court's Order of November 1, 2002.
2. These cases were thereafter divided into three groups: Cases alleging wrongful death and personal injury based primarily on circumstances and conduct up to and including the attacks of September 11, 2001 were assigned the master docket number 21 MC 97; cases alleging property damage primarily based on circumstances and conduct up to and

including the attacks of September 11, 2001 were assigned the master docket number 21 MC 101 by order of March 14, 2005; cases brought by plaintiffs – such as recovery and clean-up personnel – alleging wrongful death or personal injury primarily based on circumstances and conduct in the period after the September 11, 2001 attacks were assigned the master docket number 21 MC 100 by order of February 11, 2003.

3. Cases brought by plaintiffs – such as clean-up personnel – alleging personal injury primarily based on circumstances and conduct in the period after the September 11, 2001 attacks, and based on conduct that occurred outside the area defined as the World Trade Center Site in Case Management Order 3 of the 21 MC 100 case now constitute a fourth group. A master docket for this fourth group is hereby established: “In re World Trade Center Lower Manhattan Disaster Site Litigation.” 21 MC ____ (AKH).
4. These cases are coordinated before me because the claims for respiratory injury share several issues of fact and law with 21 MC 100 and the other World Trade Center cases, and because the defendants state that they anticipate the assertion of contribution, indemnification, and similar claims by the current defendants in the off-WTC site actions against the defendants in 21 MC 100. The cases will not be coordinated directly as part of 21 MC 100, however, because of plaintiff’s desire to have issues of fact and law unique to these cases supervised on a separate basis. The cases listed above are hereby coordinated, and the approximately 300 cases the plaintiffs represent will be brought shall be coordinated as related to this action.
5. The Clerk of the Court is hereby ordered to list the cases named on Exhibit A of this order as related to 21 MC ____ (AKH).
6. Counsel shall file originals of papers that relate to all of the cases under 21 MC ____ in

accordance with the electronic filing procedures established for 21 MC 100 as defined in Case Management Order XX of March XX, 2005.

7. The Court designates Gregory Cannata, Esq. of The Law firm of Gregory J. Cannata, 233 Broadwa, 5th Floor, New York, New York 10279-0003, to serve as liaison counsel for the plaintiffs in this case. The Court designates as defendants Co-Liaison Counsel James E. Tyrrell, Jr., Esq. of Latham & Watkins LLP, One Newark Center, 16th Floor, Newark, NJ 07102, and Richard A. Williamson, Esq. of Flemming, Zulack & Williamson, LLP, One Liberty Plaza, 35th Floor, New York, NY 10006 (hereinafter referred to jointly as “Defendants’ Liaison Counsel”). The Court directs the parties to coordinate their actions through Liaison Counsel. Nothing herein shall restrict the substantive rights of any party, including the right to be represented by separate counsel or to take separate positions from other parties. The Court reserves the right to designate liaison counsel for either plaintiffs or defendants as a replacement for the designations by the parties if the need should arise.
8. Appointment of Liaison Counsel and Steering Committee Counsel to act as set forth below will facilitate communications among the Court and counsel, minimize duplication of effort, foster the coordination of joint positions, and provide for the efficient progress and control of this litigation. Liaison Counsel are vested by the Court with the following responsibilities and duties:
 - a. prepare and maintain an official service list of plaintiffs’ and defendants’ counsel in the cases subject to this Order including the persons or companies they represent, upon whom papers shall be served in this litigation;
 - b. receive orders, notices, correspondence and telephone calls from the Court and

- the Clerk of the Court on matters of general applicability on behalf of all plaintiffs or defendants, as the case may be, and to notify such other plaintiffs' or defendants' counsel of communications received from the Court; and
- c. perform such other administrative tasks as may be necessitated by this or future CMOs, by the agreement of the parties, or by order of the Court;
 - d. maintain and distribute to co-counsel and to the opposing Liaison Counsel an up-to-date service list;
 - e. coordinate with opposing Liaison Counsel and with the Court on scheduling issues;
 - f. be responsible for the service and filing of joint pleadings and communications with the Court to the extent practicable;
 - g. receive and, as appropriate, distribute to co-counsel orders from the Court and documents from opposing parties and counsel;

Except as may be expressly otherwise provided in this or future CMOs, all pleadings, motions and other papers served in these cases shall be served on plaintiffs' and defendants' counsel for all of the parties in the case(s) to which such papers apply.

Service on a Liaison Counsel shall not suffice as service on any other party.

9. The parties shall appear for a status conference on September 22, 2005 at 3:00 P.M. in Courtroom 14D, 500 Pearl St., New York, New York 10007.

SO ORDERED.

Dated: New York, New York
August 9, 2005


ALVIN K. HELLERSTEIN
United States District Judge

Ex. A

Case Name	Docket Number
Racioppi v. Tully Construction Co., et al.	04 CV 9003 (AKH)
Arsenault v. Tully Construction Co. Inc., et al.	04 CV 5338 (SDNY, Judge Daniels)
Thomas v. The City of New York	04 CV 7217 (SDNY, Judge Daniels)
Thompson v. The City of New York	05 CV 0631 (EDNY, Judge Glasser)
Diversified Carting, Inc. v. The City of New York, et al.	05 CV 9507 (SDNY, Judge Baer)
Markut v. Sakele Brothers L.L.C., et al.	05 CV 1927 (AKH)
Foremska v. The Bank of New York Company, et al.	05 CV 3090 (AKH)
Sanchez v. Logany LLC, et al.	05 CV 1091 (AKH)
Valdez v. Logany LLC, et al.	05 CV 1092 (AKH)
Checo v. Logany LLC, et al.	05 CV 1093 (AKH)

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
IN RE WORLD TRADE CENTER DISASTER : 21 MC 100 (AKH)
SITE LITIGATION :
:

----- X
IN RE WORLD TRADE CENTER LOWER : 21 MC 102 (AKH)
MANHATTAN DISASTER SITE LITIGATION :
:

----- X
IN RE COMBINED WORLD TRADE CENTER : 21 MC 103 (AKH)
AND LOWER MANHATTAN DISASTER SITE :
LITIGATION (straddler plaintiffs) :
:

----- X
ALVIN K. HELLERSTEIN, U.S.D.J.:

Case Management Order No. 1, 21 MC 103

In the aftermath of the attacks on the World Trade Center on September 11, 2001, many workers came to World Trade Center site and nearby locations to assist with debris removal and other tasks. Some of these workers suffered respiratory and other injuries, and have filed lawsuits. Those who worked at the World Trade Center site filed suit against the City of New York and other contractors; their cases are consolidated as master docket 21 MC 100. See Case Management Order No. 2, 21 MC 100 (Feb. 7, 2005). Those who worked at sites other than the World Trade Center site filed suit against the building owners and others; their cases are consolidated as master docket 21 MC 102. See Case Management Order, 21 MC 100 (Aug. 9, 2005).

The Court has learned that a substantial number of plaintiffs—190 at last count—performed work at the World Trade Center site and at other sites. These plaintiffs have become known as “straddler” plaintiffs because their allegations span master dockets 21 MC 100 and 21 MC 102. Their status as “straddlers” raised issues for plaintiffs’ liaison counsel, for the Clerk’s

office, and for me. Plaintiffs' liaison counsel lacked a check-off complaint that adequately reflected all the allegations needed to be made by these "straddler" plaintiffs, and commenced to file multiple complaints for the same individual. The Clerk's office did not docket multiple complaints for a single plaintiff, and the splitting of a cause of action into two parts, where the injury of which plaintiffs complain is indivisible as among the various "on-site" and "off-site" defendants named in 21 MC 100 and 21 MC 102, would confuse the proceedings and create a danger of duplicate recoveries.

Following the status conference of 21 MC 102 cases on March 20, 2007, I asked the parties to propose an order that would organize the filing of these "straddler" complaints. On March 26, 2007, the parties submitted a stipulated order, proposing to split the cause of action into two parts, one that would proceed, by separate complaint, within the 21 MC 100 master docket, and one that would proceed, by another complaint, within the 21 MC 102 master docket. Having considered this proposal with the Clerk, and in light of my concerns previously expressed, I decline to order the stipulation. Instead, I order as follows:

1. The Clerk shall maintain a separate master docket and case file under the heading In re Combined World Trade Center and Lower Manhattan Disaster Site Litigation (straddler plaintiffs), 21 MC 103 (AKH). Orders, pleadings, motions, and other documents bearing the caption of this Order shall, when docketed and filed in the Master File, be deemed docketed and filed in each individual case subject to this Order to the extent applicable, and ordinarily will not be docketed separately or physically filed in such individual case.
2. Plaintiffs' liaison counsel will create a "straddler" check-off complaint to comprehend all their claims for relief.

3. The “straddler” check-off complaints shall incorporate the master complaints in 21 MC 100 and 21 MC 102, and provide each plaintiff with check-boxes to identify his claims against particular defendants of those named therein. The “straddler” check-off complaint shall not include allegations other than those made in the 21 MC 100 and 21 MC 102 master complaints and check-off complaints.
4. Plaintiff shall file the “straddler” check-off complaint in 21 MC 103 as an amended complaint, and dismiss all other complaints, by June 1, 2007.
5. Those aspects of the check-off complaint that allege injuries caused by the City of New York and other defendants, arising from, or relating to, activities at the World Trade Center sites (as defined in Case Management Order No. 3, 21 MC 100), shall be coordinated with cases collected in 21 MC 100.
6. Those aspects of the check-off complaint that allege injuries arising from, or relating to, activities at sites other than the World Trade Center sites (as defined in Case Management Order No. 3, 21 MC 100), shall be coordinated with cases collected in 21 MC 102.
7. A document that relates to all “straddler” cases shall bear a caption as follows:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
IN RE COMBINED WORLD TRADE CENTER	:	21 MC 103 (AKH)
AND LOWER MANHATTAN DISASTER SITE	:	
LITIGATION (straddler plaintiffs)	:	(all cases)
-----	X	

The Court recognizes that a document that relates to all cases in the 21 MC 100 or 21 MC 102 dockets will, by definition, also relate to the 21 MC 103 docket. Such documents shall bear dual captions, as at the top of this Order.

8. A document that relates to one or more specific cases, but not to all cases, shall bear a caption as follows:

UNITED STATES DISTRICT COURT		
SOUTHERN DISTRICT OF NEW YORK		
-----		x
IN RE COMBINED WORLD TRADE CENTER	:	21 MC 103 (AKH)
AND LOWER MANHATTAN DISASTER SITE	:	
LITIGATION (straddler plaintiffs)	:	
-----		x
JOHN DOE,	:	
	:	TITLE
	:	
Plaintiff,	:	
-against-	:	Civil Action Number(s) (AKH)
	:	
DEFENDANTS,	:	
	:	
	:	
Defendants.	:	
-----		x

9. Plaintiffs' claims arising from, or relating to, activities at the World Trade Center sites (as defined in Case Management Order No. 3, 21 MC 100) shall be stayed until such time as the United States Court of Appeals for the Second Circuit rules on Defendants' appeal in 21 MC 100.
10. Plaintiffs' claims arising from, or relating to, activities at sites other than the World Trade Center sites (as defined in Case Management Order No. 3, 21 MC 100) shall proceed in coordination with all other claims classified as related to 21 MC 102.
11. The law firm of Worby, Groner, Napoli, & Bern shall provide to the Clerk a list of cases by April 20, 2007, including the index number, date filed, and plaintiff's name, that should be classified as related to the 21 MC 103 docket.
12. The Clerk shall remove each case on the list provided by Worby, Groner, Napoli, & Bern from the 21 MC 100 and 21 MC 102 master dockets, and classify the case as related to the 21 MC 103 master docket.

13. Plaintiffs and Defendants shall submit a proposed order or orders appointing liaison counsel to represent plaintiffs and defendants with cases classified as related to the 21 MC 103 master docket, by April 20, 2007. If multiple proposals are received, the Court shall appoint liaison counsel from among the proposals.

SO ORDERED.

Date: March 28, 2007
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
IN RE WORLD TRADE CENTER :
LOWER MANHATTAN DISASTER :
SITE LITIGATION :
:
-----X

CASE MANAGEMENT ORDER NO. 3

21 MC 102 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

To promote efficiency in this consolidated litigation of over 600 cases, the parties developed master complaints and accompanying check-off complaints. On March 20, 2007, I held a status conference to address certain issues raised by the parties in relation to these complaints. This Order re-states and clarifies the rulings I made at the status conference.

1. By consent of the parties, a plaintiff shall plead causes of action under New York Labor Law §§ 200 and 241(6) separately.
2. The check-off complaint shall not include a cause of action under New York Labor Law §§ 205-a and 205-e. Plaintiffs' liaison counsel represented that no plaintiff exists at this time that could assert such causes of action; therefore, the cause of action is unnecessary.
3. A plaintiff may not attach riders to the check-off complaint asserting additional causes of action or other allegations not covered by the master complaint. A plaintiff whose circumstances cannot be described by the master complaint and check-off complaint should seek consent to file an amended master complaint and check-off complaint from Defendants' liaison counsel and, if consent is not obtained, such plaintiff should file a motion for leave to amend the complaints.
4. A plaintiff should provide, to the extent he is able, the specific location worked, including the floor or floors of specific buildings, and the other items provided in the check-off complaints discussed at the status conference on March 20, 2007.

5. Plaintiffs shall file and serve their master and check-off complaints by June 1, 2007.
6. The parties shall appear, through liaison counsel, for a status conference on June 15, 2007 at 1pm.

SO ORDERED.

Dated: March 21, 2007
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge

EXHIBIT F

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE: WORLD TRADE CENTER

LOWER MANHATTAN DISASTER

21 MC 102 (AKH)

SITE LITIGATION

-----X

New York, N.Y.
June 15, 2007
1:05 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

WORBY GRONER EDELMAN & NAPOLI BERN LLP

Attorneys for Plaintiffs

BY: WILLIAM H. GRONER

MARC J. BERN

WILLIAM J. DUBANEVICH

-AND-

GREGORY J. CANNATA & ASSOCIATES

BY: GREGORY J. CANNATA

-AND-

ROBERT A. GROCHOW PC

BY: ROBERT A. GROCHOW

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APPEARANCES (cont'd.)

PATTON BOGGS LLP

Attorneys for Defendant City of New York

BY: JAMES E. TYRRELL, JR.

JOSEPH E. HOPKINS

FLEMMING ZULACK WILLIAMSON ZAUDERER LLP

Attorneys for Defendant Silverstein Properties, Inc.

BY: THOMAS A. EGAN

KIRKLAND & ELLIS LLP

Attorneys for Defendant Verizon New York

BY: LEE ANN STEVENSON

STERN TANNENBAUM & BELL LLP

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worked out, Napoli Bern firm needs to perform a check-off complaint which is commensurate with the one that was finalized by liaison counsel for plaintiffs in the 102 docket.

MR. CANNATA: Your Honor, part of the difficulty that we have is is that the Court's order required the complaints to be filed before they were finalized. And that was part of the difficulty.

However, I understand that there are no firemen and policemen plaintiffs in this docket. And if you recall the last conference, we addressed this issue and you ordered that the 205(e) claims should be taken out. And that's what we did. And as far as I know, there aren't any --

THE COURT: So if they are still in, I guess they'll be fixed up.

MR. CANNATA: It's not a problem, Judge. There are no plaintiffs that are claiming that basis for a suit.

THE COURT: Mr. Hopkins. Again, I don't have a basis to resolve that. There's a substantive point here. The point is that a fireman and a policeman are not allowed to sue the City, I guess, for damages where they can recover the analog to workmen's compensation. That's the point, isn't it?

MR. CANNATA: No, Judge, that's incorrect.

THE COURT: Incorrect.

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MR. CANNATA: You're incorrect by that. A fireman and policeman can sue the City, but they have to allege a specific violation of law, a rule. But as far as I know, there are no plaintiffs -- they do have some. I'm being told they do have a couple. So, Judge, they have to straighten that out.

THE COURT: What's the situation?

MR. DUBANEVICH: Your Honor, William J. Dubanevich. We do have firefighters and police officers who are in the 102 classification. And that is why we had to allege violations of the General Municipal Law.

THE COURT: So what do you want me to do, Mr. Hopkins?

MR. HOPKINS: Well, after all the Sturm und Drang that we've had to get to this point to try to finalize pleadings, we now have master complaint filed which does not include allegations regarding General Municipal Law.

We have check-off complaints from Cannata and Grochow that don't make reference to that because it's not there. But now, and really, I think, for the first time we're hearing from the Napoli worby Groner firm that they do have allegations to make under those provisions, and they are not in the master complaint. So their check-off complaint refers back to the master complaint that doesn't contain those types of claims.

THE COURT: So the first assertion of the claim is the check-off complaint, and presumably you're going to move to dismiss them because of the issue of limitations.

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MR. HOPKINS: Undoubtedly. And I'm sure other substantive reasons, as well.

THE COURT: Like what? Just to give me a heads-up.

MR. HOPKINS: I've not looked at the check-off complaints, so I can't speak to whatever the clients are. But as to whether that is a proper vehicle for whoever these people -- these plaintiffs may be; whether they can rely upon

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8 this provision in the General Municipal Law to make such a
9 claim or not. It goes beyond any type of statute-type issue.

10 THE COURT: I'm not familiar with the law. I don't
11 know what it is. But I'll take the statement from Mr. Cannata
12 as expressing the law that if the City has violated a law that
13 firemen and policemen can sue. You know, all this makes my
14 head kind of swim. And I guess it begs the definition of
15 what's involved in the 102 and later the 103 cases.

16 Forgetting about the technical definition of the world
17 Trade Center, the way I looked at this is that 100 were the
18 cases that were focused mainly against the City, because the
19 Department of Design and Construction took the lead in the
20 cleanup of the world Trade Center.

21 102 were cases where there were private or public
22 homeowners independent of the Department of Design and
23 Correction, to the Department of Design and Construction.

24 And 103 is where plaintiffs did some work under the
25 jurisdiction of the DDC and other work under the jurisdiction

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1 of private and public property owners. That's how I looked at
2 it. I don't know if that's realistic or not.

3 MR. CANNATA: Your Honor, that's our position, as the
4 Court just expressed. However, when you issued the order for
5 103, we believe you made an error, and you went to the earlier
6 definition, the 100 definition, of what the world Trade Center
7 site was.

8 THE COURT: I did?

9 MR. CANNATA: You inadvertently did that. And you did
10 that --

11 THE COURT: It was the only definition that was at
12 hand. Let me just tell you this: I thought, and let me expose
13 my thinking so that if it's wrong, I want to know it's wrong.

14 I thought that DDC was in control of the cleanup
15 operations with regard to all the property identified in that
16 first order. And I think I took that definition from the
17 Victims Compensation Fund. I don't remember exactly where I
18 took it from, but I think I took it from there. And that may
19 be the cause of the problem, I don't know. And I don't know
20 what is feasible here.

21 MR. CANNATA: Well, the practical effect of it is,
22 Judge, that by using the definition from 100 that you used that
23 was made before 102 was created, you've essentially put almost
24 all of the plaintiffs from 102 back into the 100 case and thus,
25 the 103 case.

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1 THE COURT: I didn't intend that.

2 MR. CANNATA: I know you didn't intend it, Judge. But
3 I'm just telling you, for example, with our cases, I have our
4 45 or so plaintiffs, we would end up with about 35 of them into
5 103, and only a handful, eight or nine or ten, in 102. And I
6 don't think that's what the Court intended.

7 THE COURT: No, it's not what I intended. I also
8 raised the issue of the lead counsel issues with regard to 102
9 and 103. Because it was my conception that the 102 case had
10 involved lawsuits against others in the City through DDC. And
11 therefore, I thought it not particularly appropriate that the
12 same plaintiffs' lawyers are the same defendants' lawyers be

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13 functioning on 102. And I've never really resolved that issue.

14 Mr. Tyrrell.

15 MR. TYRRELL: Your Honor, I'd like to jump an issue
16 back, as we've moved ahead to the issue of whether there should
17 be broader representation at the level of the liaison, not
18 lead, but liaison counsel. I'd like to speak to that later,
19 but I'd like to respond to Mr. Cannata's point.

20 We have been operating for more than two years now
21 with a particular definition that was born in the 100 docket
22 that your Honor created as to what was the geographic area, the
23 16 acres covered by that docket. But it is not true when you
24 created 102, you'll remember we objected to it at that time, we
25 said, Don't bother breaking them up; keep them altogether.

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1 we're over that. But when you created 102, you took the
2 reciprocal of that definition; you said other things --

3 THE COURT: That's right.

4 MR. TYRRELL: -- in that 16 acres.

5 THE COURT: That's right.

6 MR. TYRRELL: Now, that made great sense. Because
7 whether the claim occurred in lower Manhattan or occurred, as
8 Mr. Cannata says, here in this courthouse, and frankly, I think
9 the only one in this courthouse who possibly got sick is your
10 Honor for working too hard on the case. But that's a different
11 kind of claim.

12 THE COURT: I need a remedy.

13 (Laughter)

14 MR. TYRRELL: You need a remedy. I think it's more
15 than over-the-counter, your Honor. If we go back now and
16 change, so I'm now focused exactly on that issue --

17 THE COURT: My wife said retire. I said the case will
18 follow me.

19 (Laughter)

20 MR. TYRRELL: If we go there now, okay, we're going to
21 ditch all of the definitions and organizational stuff that we
22 had. But then when you look at what Mr. Cannata proposes in
23 his letter, which is something that is supposed to be better,
24 and of course, you said nobody's substantive rights is going to
25 be affected by this. This is just to help get it organized.

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1 His definition will turn on whether the City of New
2 York is a defendant in each case. That makes no sense
3 whatsoever.

4 So in his definition, someone who worked on the pile
5 and sued only Tully, it would no longer be a 100 case, because
6 the City of New York would have to be in it, according to his
7 proposed --

8 THE COURT: If someone worked on the pile and worked
9 for Tully --

10 MR. TYRRELL: And didn't sue New York, too, it
11 wouldn't any longer be a 100 case.

12 THE COURT: Well, who would he sue?

13 MR. TYRRELL: I don't know. It's amiss.

14 MR. CANNATA: I didn't say that, Judge.

15 MR. TYRRELL: We don't need to change this.

16 MR. CANNATA: Judge, excuse me. I didn't say that in
17 my letter. I said outside on the mound.

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18 THE COURT: Stop. Stop. What's the justification of
 19 having a different collection of cases in 102 from what I have
 20 in 100? I'll answer it. It's because it's a different
 21 defendant.
 22 The City, except as an owner of property, is not
 23 involved. The violations alleged of the labor law were by the
 24 managers and owners of the specific properties. I mean, folks,
 25 that's what I had in mind.

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1 MR. TYRRELL: And your Honor, at this point we're not
 2 suggesting we change that.
 3 THE COURT: The definition.
 4 MR. TYRRELL: It is Mr. Cannata who is suggesting --
 5 THE COURT: My definition.
 6 MR. TYRRELL: -- that your definition be changed. So
 7 now if someone worked, and let's take the Deutsche Bank
 8 building as an example. It was under the control, we believe,
 9 of the DBS for the cleanup. It was completely -- it wasn't not
 10 banned, it was destroyed.
 11 THE COURT: DBS?
 12 MR. TYRRELL: I'm sorry, Department of Design and
 13 Construction.
 14 THE COURT: I don't think sanitation was involved.
 15 MR. TYRRELL: Right. Now, that building was never
 16 reoccupied, okay. So as to that building, if you now took his
 17 definition and transferred that out because it was originally a
 18 private building, we would be creating yet more confusion.
 19 THE COURT: I think DDC was involved with Deutsche
 20 Bank.
 21 MR. TYRRELL: That's why it should stay in 100.
 22 THE COURT: That's why Verizon is in 100 also.
 23 MR. TYRRELL: And you've already ruled on those
 24 applications as to Verizon, and I know Verizon's counsel wants
 25 to speak to that. But if you followed Mr. Cannata's suggestion

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1 now, all of the Verizon cases and the Verizon building would
 2 move to the 102 docket.
 3 THE COURT: I've taken the position throughout that
 4 substantive rights should not be affected by how I categorize
 5 the case. Because I never really felt confident in my
 6 definitions. And I didn't want substantive rights to be
 7 affected by it.
 8 It was my impression that Deutsche Bank, which is
 9 across the street from is it One or Two World Trade Center, was
 10 treated like it was part of the World Trade Center in terms of
 11 the cleanup operations. But the buildings on Rector Street, to
 12 draw an example, two blocks away, three blocks away, I don't
 13 remember exactly, should not be in the same category as the
 14 World Trade Center.
 15 Now, you ask what about the buildings in between, the
 16 church, for example, across the street, the other way to the
 17 World Financial Center. The World Financial Center is in the
 18 definition, I see. I don't know why. I guess DDC functioned
 19 there, so maybe that's why.
 20 MR. TYRRELL: One of the reasons is debris fell into
 21 those buildings, structural debris that was the same type
 22 that's being cleaned up on the ground fell over and went right

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23 into the Deutsche Bank building.
24 THE COURT: You know, I don't really care, except to
25 the extent that the category is driving a different result from
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1 that which we normally obtain. And I need to be alerted to
2 that when it happens.
3 why I challenge your leadership, Mr. Tyrrell, it's not
4 because I don't admire your leadership. And I will tell you
5 very candidly, although we've had our differences in these
6 cases, one way that I've been able to administer the cases is
7 because of the hard work that you and Mr. Hopkins and your
8 other colleagues have put into this case. I'm indebted to you.
9 And I have no doubt but that 102 and 103 will benefit from your
10 leadership, as well.
11 But what I'm bothered by is that as I look at these
12 cases, DDC was not involved. And it should not be taken to
13 task for providing masks or not providing masks, or giving
14 education or not giving education. If that's the case, why are
15 you involved? Why do you care, except as a friend of the
16 Court. I'm glad to have your friendship, but there's a
17 conflict issue.
18 MR. TYRRELL: I'll tell you why I care, and then I'll
19 tell you why you shouldn't worry about it. Okay?
20 THE COURT: Okay.
21 MR. TYRRELL: First, I care because according to my
22 colleagues over here, the City of New York in the 102 docket is
23 currently in 65 to 95 actions. I am their counsel.
24 THE COURT: As owner?
25 MR. TYRRELL: We don't have the specific complaints
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1 yet, but we assume so, yes. As either a tenant or an owner,
2 yes, in 65 to 95 of those actions. And is in a whole bunch of
3 actions that will be in that status in the 103 docket, as well.
4 THE COURT: By all means you have to be in the case,
5 but there have to be others.
6 MR. TYRRELL: We completely agree with that, let me
7 tell you the --
8 THE COURT: No one is stepping up.
9 MR. TYRRELL: Well, that's the problem. But let me
10 tell you why you don't have to be concerned about the thing you
11 put in your order, which is the issue of conflict. Why?
12 Because when you serve as liaison counsel, the general law is
13 it isn't a conflict; your duty of loyalty still runs to your
14 client. You have a duty to the Court and everybody else to
15 serve as liaison --
16 THE COURT: I accept that, Mr. Tyrrell, as long as
17 there are others in the group to protect different interests.
18 MR. TYRRELL: Couldn't agree with you more. But one
19 last point, because I went and looked it up. You, very
20 smartly, in the order you entered when you created liaison
21 counsel, specifically said in CMO No. 2 way back when that
22 there would be no conflicts by serving in that position.
23 So only the issue you have now addressed is the right
24 issue, which is would some other people please step up so that
25 there is a broad enough representation.

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EXHIBIT G



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August 1, 2007

Via Electronic Mail

Hon. Alvin K. Hellerstein, U.S.D.J.
United States District Court for the Southern
District of New York
500 Pearl Street, Room 910
New York, New York 10007

Re: Kirk Arsenault, et al. v. Tully Construction Co., Inc., Tully Industries Inc., and
Deutsche Bank, Docket No. 04-cv-5338 (AKH)

Dear Judge Hellerstein:

Counsel for the parties in the above-captioned action hereby submit this joint letter to request the Court's determination of the defendants' request to transfer this action from the 21 MC 102 docket to the 21 MC 100 docket.

Defendants' Position:

Counsel for Tully Construction Co. Inc. and Tully Industries, Inc. ("Tully") respectfully requests the transfer of the above-captioned action (the "*Arsenault* action") from the 21 MC 102 docket to the 21 MC 100 docket. Co-defendant Deutsche Bank Trust Company Americas ("Deutsche Bank") does not object to Tully's request under the circumstances presented here.

Plaintiffs' counsel Robin Wertheimer, Esq. represents three plaintiffs in actions allegedly arising out of those plaintiffs' work allegedly related to the rescue, recovery and debris removal efforts following the collapse of the World Trade Center ("WTC") on September 11, 2001. Those plaintiffs are Kirk Arsenault, Steven Zablocki and Richard Racioppi. The latest version of the *Arsenault* complaint (filed October 13, 2004) (currently

Hon. Alvin K. Hellerstein, U.S.D.J.

August 1, 2007

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pending in the 21 MC 102 docket) encompassed claims brought by two plaintiffs: Kirk Arsenault and Steven Zablocki. Mr. Zablocki's claims apparently were subsequently severed from the *Arsenault* action on December 26, 2006, when a separate individual complaint was filed in Mr. Zablocki's name under Civil Action No. 06-cv-15494 (the "*Zablocki* action"). The *Zablocki* action thereafter was docketed in 21 MC 100. Despite the apparent severance of Mr. Zablocki's claims from the *Arsenault* action, however, plaintiffs' counsel has not filed any amended pleading in the *Arsenault* action to reflect such severance. Furthermore, plaintiffs' counsel has failed to file a check-off complaint in the *Arsenault* action (notwithstanding the Court's prior order that check-off complaints for all actions in 21 MC 102 were to be filed by June 14, 2007).¹

Plaintiffs' counsel Ms. Wertheimer previously wrote the Court to request the transfer of the *Zablocki* action from the 21 MC 100 docket to the 21 MC 102 docket. Defendants' counsel were never copied on plaintiffs' counsel's communication to the Court. Responding to plaintiffs' counsel's request, the Court ruled that the *Zablocki* action should "remain classified as related to 21 MC 100, and remain subject to the Second Circuit's stay." (April 13, 2007 Order Denying Motion to Transfer Dockets, Docket No. 06-cv-15494, 21 MC 100 (AKH)) (the "*Zablocki* Order"). Specifically, the Court indicated that plaintiff Zablocki's request to transfer his case from 21 MC 100 to 21 MC 102 was denied on the grounds that his complaint alleged that he worked at the Deutsche Bank building at 130 Liberty Street which is "considered part of the World Trade Center site, as defined in Case Management Order No. 3, 21 MC 100 (Feb. 7, 2005)."² The Court also denied plaintiff Zablocki's transfer request

¹ The action of plaintiff Richard Racioppi, captioned *Richard Racioppi v. Tully Construction Co., Inc., Tully Industries Inc., and Deutsche Bank*, Index No. 112407/04 (latest complaint dated October 13, 2004), is not the subject of this joint letter as plaintiffs' counsel has indicated that the *Racioppi* action shortly will be voluntarily dismissed or withdrawn. If that understanding is incorrect in any way, then Tully respectfully requests, without objection from Deutsche Bank, that the *Racioppi* action also be transferred from the 21 MC 102 docket to the 21 MC 100 docket for the reasons set forth herein. Although the *Racioppi* action (like the *Arsenault* action) currently is docketed in 21 MC 102, no check-off complaint has been filed in the *Racioppi* action.

² Deutsche Bank does not concede that the definition of the World Trade Center site in CMO 3 is necessarily dispositive of Tully's request. In Deutsche Bank's view, it is the nature of a given plaintiff's work, not just the location, that should dictate whether the case is designated to 21 MC 100 or 21 MC 102. However, the parties need not debate that issue in the present application because the type of work performed by Arsenault, Zablocki, and Racioppi, on behalf of a City contractor, militates in favor of their designation to 21 MC 100.

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because defendant Tully is one of the contractors of the City of New York involved in the 21 MC 100 docket and is one of the contractors involved in the interlocutory appeal to the Second Circuit which resulted in a stay of all 21 MC 100 proceedings. *See Zablocki Order.*

Just like the *Zablocki* action, the *Arsenault* action belongs in the 21 MC 100 docket and should be transferred there and stayed. The allegations of plaintiff Arsenault are identical to those of plaintiff Zablocki. *Compare Kirk Arsenault et. al. v. Tully Construction Co., Tully Industries Inc., and Deutsche Bank*, Index No. 04 CV 5338 at ¶¶ 11, 14 ("*Arsenault Complaint*") with *Steve Zablocki v. Tully Construction Co., Inc., Tully Industries Inc., and Deutsche Bank*, Index No. 06-CV-15494 at ¶¶ 11, 14 ("*Zablocki Complaint*").³ Plaintiffs' counsel has indicated that plaintiffs Arsenault and Zablocki worked side-by-side in the Deutsche Bank building.⁴ Both plaintiffs⁵ have brought suit against Tully and Deutsche Bank for the WTC-related work in which they allegedly were involved. *Compare Arsenault Complaint* at ¶¶ 4, 6, 40 with *Zablocki Complaint* at ¶¶ 4, 6, 45. And finally, both plaintiffs⁶ Arsenault and Racioppi allege that they were employed by Manfort Brothers Inc., a subcontractor of Tully, and worked doing debris removal and cleanup work in the Deutsche Bank building. *Compare Arsenault Complaint* at ¶ 11 with *Zablocki Complaint* at ¶ 11. Manfort Brothers, Inc. conducted this work as a subcontractor to Tully who was working as one of the City of New York's contractors in the rescue, recovery and debris removal effort.

Given the identical nature of the *Arsenault* and *Zablocki* claims and for the reasons already articulated by the Court in the *Zablocki Order*, Tully respectfully requests that the *Arsenault* action be transferred from the 21 MC 102 docket to the 21 MC 100 docket. Should the Court require that a formal motion be filed seeking this result, Tully respectfully requests the opportunity to promptly file such motion upon request of the Court. Although Tully is protected by a current stay from the Second Circuit, we respectfully request that the time to respond to the Master Complaint be extended with respect to Defendants during the pendency

³ And the allegations of plaintiff Racioppi are the same. *See, e.g., Racioppi Complaint* at ¶¶ 13, 16.

⁴ With plaintiff Racioppi. *See id.* at ¶ 16.

⁵ And Racioppi. *See id.* at ¶ 7.

⁶ And Racioppi. *See id.* at ¶ 13.

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of this letter request to avoid prejudice should the Court disagree with respect to the relief requested herein.

Plaintiffs' Position:

Plaintiff Kirk Arsenault objects to the proposed transfer of his case from its present docket. The defendants' proposal is highly prejudicial and, under its own reasoning, entirely unfounded.

Plaintiffs Arsenault and Zablocki, working side by side, were employed by Manfort Brothers, a sub contractor of Tully, to dismantle the Deutsche Bank building at 130 Liberty Street in the aftermath of September 11. These men were employed in the fairly unique job of "burners" or, burning the steel of the building in such a way as to control its demolition. In the course of this employment, they were exposed to molds and other toxins which have caused them serious injuries. Their employ commenced on or about October 15, 2001.

In 2004, Arsenault and Zablocki brought one complaint under, *inter alia*, the labor law. It was filed in the Southern District on diversity grounds because these men reside in Massachusetts. As the docket illustrates, it was moved from Judge Kram, to Judge Cedarbaum to Judge Castel, then a pretrial conference was held before Judge Casey before it went to Judge Daniels, and it finally landed, despite plaintiffs' objections, with the World Trade Center cases. However, were it to be designated a World Trade Center case, it was more properly designated as an off-site case, in 21 MC 102.

The reasoning given by the defendants in this letter do not justify a reassignment of this case to the stayed docket. These plaintiffs' type of work does not in any way "militate on favor of their designation to the 21 MC 100 docket". The type of work that they did was not in any way "related to debris removal and clean up work". These quotes are from the defendants' portion of this letter in support of its reasoning. Should the type of work they did be a motivating factor in the reclassification, then defendants' argument must fail because, as mentioned above, their work was to dismantle a building more than a month after the disaster. (As we all know, that job was not completed; the building still stands.)

Plaintiff Zablocki was severed from the joint initial complaint pursuant to the Court's Order that all plaintiffs file separate complaints. Prior to his new complaint being filed, Zablocki had been docketed with Arsenault in 21 MC 102. In severing his complaint from Arsenault's, Zablocki ended up in the 21 MC 100 docket. At a 21 MC 102 conference before Judge Hellerstein, the undersigned requested the Court's guidance as to how to reunite these two plaintiffs in the 21 MC 102 docket. The instruction was to write to Judge Hellerstein and

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request that he direct the clerk of court to move Zablocki into the 21 MC 102 docket. Two such requests on behalf of Zablocki were denied.

Plaintiff Arsenault did file a check off complaint in the 21 MC 102 docket in a timely manner. Arsenault has been in the off site docket since its inception. It only makes sense that a worker who worked after October 15, 2001 in a job that entailed strictly demolition be in the 21 MC 102 docket. Defendants have waited until now to try to move this case to the stayed docket because of the error that was promulgated with the Zablocki case after his complaint was separately filed. Defendants have had years to request this transfer, but never did because there was no substance to this request prior to the severance and reassignment of the Zablocki matter.

Given the fact that there is a possibility of the stayed 21 MC 100 cases being dismissed by the Second Circuit Court of Appeals, the prejudice to this plaintiff is immeasurable. As the defendants' portion of this letter suggests, the designations of these dockets are not immutable. In this letter, Tully does not agree with Deutsche Bank as to the definition of the World Trade Center site. But they both agree that the nature of the work has some weight. These defendants then proceed to mischaracterize the nature of the work performed by these plaintiffs as clean up and debris removal. Should this be a deciding factor, then it clearly does not support moving this plaintiff into a docket with such workers and their request must be denied. Furthermore, it seems highly prejudicial to move a plaintiff into a stayed docket at such a late date when the case has not been previously classified as such nor has this plaintiff been given the opportunity to make timely objections on his own behalf (with all respect to, and admiration for, the papers filed on behalf of the plaintiffs in the 21 MC 100 docket).

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The request of the defendants to move Kirk Arsenault's case from its present place in the 21 MC 102 docket into the 21 MC 100 docket should be in all respects denied and as the request is based mostly on the reassignment of the Zablocki action, the Court is asked to reconsider its placement of the Zablocki action.

Respectfully submitted,

s/
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Industries, Inc.

s/
James E. Tyrrell, Jr., Esq.
PATTON BOGGS LLP
Counsel for Tully Construction Co. Inc., Tully
Industries, Inc.

s/
Marc D. Crowley, Esq.
DAY PITNEY LLP
Counsel for Deutsche Bank Trust Company Americas

s/
Robin S. Wertheimer
WERTHEIMER ASSOCIATES, P.C.
Counsel for Plaintiff Kirk Arsenault

EXHIBIT H

21 MC 102

In Re World Trade Center Lower Manhattan Disaster Site Litigation

Plaintiff	Case Number
Byron Acosta	07cv1552
Luis Adriano	07cv4445
Gladys Agudelo	07cv4446
Enrique Ali	07cv1554
Raul Allivar	05cv9821
Maria E. Alvarez and Carlos Chavarriaga	05cv10135
Jose Alvarracin	07cv1556
Ivan Ascencio	07cv1460
Marcelo Atiencia	07cv1562
Peter B Bailon	07cv5336
Jose Barahona and Domenica Barahona	07cv5550
Hector Betancourt	07cv4453
Leopoldo Burgos	07cv1473
Manuel Caguana and Antonia Caguana	06cv11968
Ivan Calero and Reyna Calero	07cv1575
Wilson Calle	07cv1578
Rey R. Campoverde	07cv5280
Rodrigo Campoazano	07cv4459
Edison Cardenas	07cv1580
Silvia Castillo and Segundo Castillo	05cv1718
Nancy Chuva	07cv1589
Yolanda Cintron	06cv5631
Jorge E Cortez	07cv5394
Lidia Cortijo	07cv317
Nancy Criollo and Lawrence Zenteino	07cv4462
Clara Dota	07cv1602
Jesse Drake and Susan Drake	07cv5353
Stanislaw Drozd and Monika Drozd	06cv14620
Inerva Duarte	07cv1603
Elvia Dutan and Wilfredo Dutan	07cv1606
Jorge Encalada	07cv1607
Luis Franco	07cv4466
Janina Frelas	07cv1612
Norberto Gallardo	07cv5290
Viviana Garcia	07cv1617
Peter Gaspar	05cv10739
Leonard Gawin and Mirosława Gawin	07cv1619
Samuel T. Giamo and Rosemary Giamo	06cv11676
Hitien E Giraldo	07cv5554
Rosa Gualpa	07cv4472
Armando Guzman	07cv5556
Avenia Hernando and Nidia Hernando	07cv4473
Julio Hurtado and Elda Monica Hurtado	07cv5295
Manuel Idrovo	07cv1628
Edgar Idrovo	07cv1627
Jorge Inga	07cv1629
Jozef Jablonski and Agnieszka Jablonska	07cv1630
Jonas Jaramillo and Blanca Romero	06cv14746
Marian Karus and Barbara Karus	07cv1635
Edward Kosowski	07cv5299

21 MC 102

In Re World Trade Center Lower Manhattan Disaster Site Litigation

Ana Lascano	05cv9333
Plaintiff	Case Number
Andrzej Lasica and Ewelina Lasica	07cv4480
Carlos Lenis and Lucia Lenis	06cv10045
Ines Leon and Luis E. Quezada	07cv4481
Cesar Leon and Agnes Dipini	07cv63
Wilmo Loja	07cv4482
Fernando Lucero	07cv5366
Rosa Medina	07cv4491
Maria E. Melendez	07cv5397
Juan Mendez and Kareen Mendez	07cv1664
Carlos Merchan and Martha Merchan	07cv1665
Eugenic Mora and Olga Mora	06cv13168
Tatiana Morales and James Fink	07cv5370
Sandra Moreno	07cv1670
Luis Naranjo and Rosa Naranjo	05cv10738
Walter Naranjo and Miriam Naranjo	07cv4496
Oscar Negrete	07cv5371
Sean O'Connell and Carole O'Connell	07cv5374
Rosa Palaguachi and Rigoberto	07cv1680
David Reynolds and Katherine Reynolds	07cv3446
Marcel Rhoden and Deirdre L. Worley	07cv5311
Maximo Riera and Fanny Riera	07cv1519
Patricio Rodas and Taina Ruiz	07cv1694
Jaime Rojas and Johanna Hernandez	07cv4511
Mieczyslaw Romaniuk	07cv5316
Victor Salazar	07cv4512
Rosa Sanchez and Hector Albarracih	06cv12488
Edilberto Sanchez	07cv5384
Emanuel Santamaria	07cv1528
Gala Sarmiento	07cv1529
Edwin Sarmiento and Nora Sarmiento	07cv4515
Teresa Serrano	05cv8937
Raul Siguencia	07cv1533
Felipe Suarez	07cv1707
Samuel Sumba and Mercedes Sumba	07cv1710
Pedro Tamayo and Gabriella Tamayo	07cv1538
Nicholas Teham	07cv5564
Julia Tenezaca	07cv1714
Cesareo Teran	07cv5389
Jeanne Thorpe	07cv1715
Carlos A. Valencia and Gloria N. Bonilla	07cv5324
Rommel Vasquez and Rosa A. Gomez	07cv1543
Kattia Vazquez and Peter Vazquez	07cv1722
Severo Vega and Lila Gonzalez	07cv4521
Segundo Villarroel and Martha L. Villarroel	07cv1546
Kleber Villarruel	06cv13703
Kevin Walsh	06cv12608
Robert Waniurski and Ewa Waniurski	07cv4524
Ancil Watson	07cv5391
Clarence Wragg and Cecilia Wragg	06cv8125